

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 860 of 1990

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

YOGI KIRANA & GENERAL STORES

Appearance:

Mr. ST Mehta, Addl. PP for Petitioner
MS SK VISHEN for Respondent No. 1
MR AJ PATEL for Respondent No. 5
MR KR RAVAL for Respondent No. 7

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 19/02/97

ORAL JUDGEMENT

This appeal is preferred against the order of acquittal recorded by the learned Chief Judicial Magistrate, Nadiad in Food Case No. 36 of 1987 on 11th June, 1990.

2. The complainant is the Food Inspector appointed by the Government. The complainant bought sample of edible oil from sealed tin from the accused No. 1 firm of which the accuseds Nos. 2,3 and 4 are the partners. Accused No. 5 is a firm from which the complainant had bought said tin of edible oil and accused No. 6 is the partner of the said accused No. 5 firm. Accused No. 7 is the Company which is alleged to have manufactured the oil in question.

3. The sample of oil purchased from accused No. 1 was found to be adulterated. A complaint was, therefore, lodged against accused No. 1 to 7. The accused No. 1 has proved that it had purchased the tin of oil from which sample was sold, from accused No. 5 which is a wholesale dealer in the edible oils. It has also proved that the tin was preserved by it in the same condition as was purchased by it with seal and the label. Accuseds Nos. 1 to 4, therefore, are entitled to the benefits of section 19(2) (ii) and 19(2)(b). In view of the said provisions, accused No. 1 cannot be said to have committed an offence pertaining to the sale of adulterated oil. Said accused has, therefore, been rightly acquitted and accused No. 2, 3 and 4 being the partners of accused No. 1 firm, they too are entitled to be acquitted.

4. Accused No. 6 is the proprietor of accused No. 5 firm which is a wholesale dealer in the edible oils. It is proved that the accused No. 5 had purchased tin of oil in question from accused No. 7 and had sold sealed tin with label to accused No. 1 firm. In that view of the matter, accused No. 5 and 6 are entitled to the benefit of section 19 (2)(a)(ii) and 19(2)(b) and are required to be acquitted of the charge framed against them.

5. The prosecution has proved that the tin of oil in question was bought by accused No. 5 firm from accused No. 7 Company. However, it has failed to prove that the accused No. 7 Co. was the manufacturer of oil. Further, no charge has been framed against either the proprietor or the partners of accused No. 7 Co. Accused No. 7 is, therefore, rightly acquitted for want of necessary proof.

6. In view of the above discussion, this appeal is dismissed.

*Vyas